THE HONOUABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.15086 of 1996

Between:

G.Ramulu. ..
PETITIONER

and

Senior Inspector/Sales Officer,
Nalgonda District Cooperative Central Bank,
and another.
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RESPONDENTS

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ORDER:

This writ petition is filed seeking Mandamus declaring the proceedings No.8617/70-C, dated 26-10-2004, passed by the 2nd respondent, and further action taken by the 1st respondent for sale of immovable properties to an extent of Ac.7-33 gts. in Sy.Nos.31 and 136/30 situated at Varkudpally village, Veligonda Mandal, Nalgonda District, through sale notice, dated 29-06-1996, as arbitrary and illegal.

This is a very pathetic case. It seems the petitioner was elected as President of the 3rd respondent society during the year 1961-62. Thereafter, he was never elected as President. However, it seems while conducting audit and inspection of the records during the year 1975-76, it came to light that the petitioner had collected certain amount from the members of the 3rd respondent society and did not deposit the same into the account of the society. On the basis of the said report, the surcharge proceedings under Section 60 (1) of the Cooperative Societies Act (for short "the Act") were issued on 29-04-1980. It seems the petitioner left the village and doing business at Hyderabad city. Therefore, the order, dated 29-04-1980, passed under Section 60(1) of the Act, was not communicated to the petitioner. The petitioner came to know about all these proceedings only when the auction sale notice was issued on 29-06-1996. Therefore, he filed the present writ petition.

It is the case of the petitioner that neither during the enquiry under Section 52 of the Act nor enquiry that purported to have been conducted on 29-04-1980, any notice of any kind was served on him.

All the enquiry proceedings were conducted behind his back. Though the surcharge proceedings were passed on 29-04-1980, they were sought to be executed by way of sale notice, dated 29-06-1996.

There is no necessity to go into all the details. It is an admitted fact that the proceedings, dated 29-04-1990, was not served on the petitioner and no detailed enquiry as required under Section 60 of the Act was conducted before passing impugned order, dated 29-04-1990.

A Division Bench of this court in ***CHALLA SANYASINAIDU*** v. ***DEPUTY REGISTRAR OF CO-OP. SOCIETY, SRIKAKULAM***, held as under:

> "In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities on the basis of the report of the enquiry officer, he may initiate surcharge proceedings under Section 60. The report may form the basis for the Registrar to proceed under Section 60 and issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross-examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the

show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed. Therefore, we respectfully agree with the view taken by the learned Judge in *S.Rama Subba Rao v. President, Kaikuluru Irrigation and Power Department Sub Divisional Employees Co-operative Credit Society Limited (supra).* *Even in Mohd.Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others* (supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issurance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned

Judge appear to strike a contrary note, and we do not therefore subscribe to the same."

Following the above judgment, the impugned order, dated 29-04-1980, and consequent sale notice, dated 29-06-1996, are liable to be set aside.

Accordingly, the writ petition is allowed setting aside the proceedings, dated 29-04-1980 passed by the 2nd respondent and the sale notice, dated 29-06-1996, passed by the 1st respondent.

The petitioner was the President of the 3rd respondent society way-back in the year 1961-62. Now, it is more than 45 years and the petitioner is aged about 78 years old. He has already paid an amount of Rs.5,000/- (Rupees five thousand only) under protest. The Society may consider the same, while closing the account, in view of the advanced age of the petitioner. There shall be no order as to costs.

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13-07-2006

Prv